



**In re Estate of Robert Kamau Njoroge (Deceased) (Succession Cause  
134 of 2020) [2022] KEHC 14032 (KLR) (Family) (30 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 14032 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 134 OF 2020  
M THANDE, J  
SEPTEMBER 30, 2022**

**RULING**

1. Before the court for determination is an application dated November 12, 2021 seeking:
  1. Spent;
  2. That a declaration do issue that Andrew Kariuki Kamau, Peter Kimani Kamau and Michael Gichinga Kamau the administrators are in contempt of and disobedience of this honourable court's order of October 12, 2021.
  3. That consequently the administrators be arrested and committed to civil jail for contempt and disobedience of the court order issued on October 12, 2021 for a period of six (6) months and/or they be removed as administrators of the estate of Robert Kamau Njoroge.
  4. That the administrators/respondents do purge the contempt by fully complying with the order made on October 12, 2021.
  5. That this honourable court do make such other or further orders as shall ensure compliance of the court order of October 12, 2021.
  6. That the administrators do pay the costs of this application.
2. In an affidavit sworn on even date by the 1<sup>st</sup> applicant, it was averred that by the court order of October 12, 2021, the respondents were directed to inter alia file a summons for confirmation of grant, pay the estate's expenses and outstanding loans and pay to the 1<sup>st</sup> applicant, the monthly upkeep sum of Kshs 75,000/= from the rents collected from the properties of the estate. It is the applicants' case that in spite of the respondents being aware of the said order, they have deliberately refused, neglected and declined to comply with the same. In particular, the respondents have not filed the summons for confirmation of grant. Despite collecting rent from the properties of the estate, they have not paid the outstanding loan owed to Co-operative Bank nor have they paid the 1<sup>st</sup> applicant's upkeep as directed. The applicants thus contend that the respondents are in deliberate disrespect and contempt of the court order and



ought to be punished by committal to civil jail and stripped of their mandate as administrators of the estate.

3. On her part, the 1<sup>st</sup> applicant stated that she complied with the court order by releasing to the respondents, the 2 shops she was using. The 1<sup>st</sup> applicant further stated that the estate does not have a car wash as alleged by the respondents.
4. The respondents opposed the application vide a replying affidavit sworn by Peter Kimani Kamau, the 2<sup>nd</sup> respondent on November 25, 2021. He averred that after the order of October 12, 2021, the 1<sup>st</sup> applicant refused to open the business premises on LR 6845/1689/2306, Utawala and only did so after their advocates wrote a letter to her. This led to loss of potential tenants. The respondents further accused the 1<sup>st</sup> applicant of refusing to open the car wash premises, near the water vending business leading to loss of potential tenants who wanted to rent the same for Kshs 60,000/= . The respondents take issue with the application in which the applicant seeks payment yet she has refused to comply with Court orders. The respondents stated that contrary to her allegation, they had paid Kshs 30,000/= to the 1<sup>st</sup> applicant. They further stated that they had filed the summons for confirmation dated November 11, 2021 which the 1<sup>st</sup> applicant should respond to instead of wasting the Court's time with inconsequential issues. They accused the applicant of coming to court with unclean hands and seeking to benefit from her own disobedience of court orders. The respondents urged that the application be dismissed with costs.
5. Parties filed their written submissions which I have duly considered.
6. The jurisdiction of this court to punish for contempt is found in section 5 of the Judicature Act which provides:
  - (1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and such power shall extend to upholding the authority and dignity of subordinate courts.
7. The applicants contended that the orders in question were made after hearing all parties and that the terms thereof were very clear. The orders were made in the presence of all parties and their advocates and the respondent knew of the same. The applicants submitted that no application has been made for interpretation, review or stay of the orders and no appeal has been filed. Accordingly, the orders must be taken to have been clearly understood and therefore binding on the parties. It was further submitted that the administrators admitted to have remitted only Kshs 30,000/= to the 1<sup>st</sup> applicant yet the order directed that she be paid Kshs 75,000/=.
8. The Court did by its orders of October 12, 2021 direct the respondents to file a summons for confirmation of grant by October 26, 2021, pay from the income of the estate, the outstanding loans and the monthly sum of Kshs 75,000/= to the 1<sup>st</sup> applicant for upkeep. The respondents were obligated to obey the orders of the Court.
9. It has been stated in a long line of authorities that the reason why Courts will punish for contempt is to safeguard the rule of law and to protect the dignity of the court. The purpose is also to assure a party in favour of whom an order is made that that order will be obeyed. court orders are not made in vain and once a court order is made, it must be obeyed. Romer LJ in Hadkinson v Hadkinson [1952] 2 ALL ER 567 stated:

It is the plain and unqualified obligation of every person, against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The



uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.

10. It is the applicants' case that the respondents wilfully disobeyed the court orders. The respondents denied this and contended that they have remained committed to respecting and obeying the orders of this court. They submitted that they have been sending not less than Kshs 30,000/= monthly to the 1<sup>st</sup> applicant. They have not deliberately disobeyed the court orders and asserted that the 1<sup>st</sup> applicant in disobedience of the said orders has been interfering in the management of the estate. They submitted that the 1<sup>st</sup> applicant refused to open up all the properties and had chased away potential tenants and yet demanded to be provided for from the said estate.

11. A party who seeks orders for contempt of a court order, must bring the application within the threshold required, namely that an applicant must demonstrate the terms of the order in question, knowledge of the terms by the respondent and wilful disobedience by the respondent of the said order. In the case of *Samuel M. N. Mweru & others v National Land Commission & 2 others* [2020] eKLR Mativo, J. (as he then was) restated what an applicant was required to prove in contempt proceedings, as follows:

It is an established principle of law that<sup>[45]</sup> in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) knowledge of these terms by the respondent, (iii). Failure by the respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the respondent would normally be inferred, but the respondent could rebut this inference by contrary proof on a balance of probabilities.<sup>[46]</sup> Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book contempt in modern New Zealand<sup>[47]</sup> who succinctly stated:-

There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- (b) the defendant had knowledge of or proper notice of the terms of the order;
- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant's conduct was deliberate.

12. The terms of the court orders of 12.10.2021 were clear and were issued in the presence of the respondents and their counsel. The respondents therefore had proper notice of the orders and the terms thereof. In spite of this, the respondents did not file the summons for confirmation of grant as directed and only did so a month after on November 11, 2021. Further the respondents have not paid the outstanding loans and have, of their own confession, only paid to the 1<sup>st</sup> applicant the sum of Kshs 30,000/= instead of the amount ordered.

13. The court notes that the respondents blame the 1<sup>st</sup> applicant for their failure to comply with court orders. If indeed the applicants had failed to release the premises leading to loss of tenants, why did the respondents not move the court to cite the applicants for contempt? Why wait until the present application is filed to complain about the applicant's failure to comply? A party accused of disobeying court orders cannot deflect by stating that his opponent is also in disobedience of court orders. Further, partial obedience is no obedience at all. A party cannot do as he pleases and then tell the court that he has complied with court orders. Had the respondents wished the court to favourably consider



their explanation, the least they could have done was to disclose to the court the amount of rent they had received and how they have expended the same, thereby demonstrating the difficulty faced in complying with the court order. This they have not done and the court rejects their explanation. In the premises, the court finds that the respondents are guilty of willfully disobeying the court orders of October 12, 2021.

14. Having found as I have that the respondents have disobeyed the orders of this court, consequences shall follow. court orders are not made in vain. The consequence of deliberate disobedience of court is punishment. As I consider the appropriate punishment, I note that this is a family matter and there is value in preserving harmony in the family. Committing the respondents to civil jail for coercive purposes will involve a significant inroad upon personal liberty. The deceased died in 2019 and the matter relating to the distribution of his estate remains unresolved to date. The relationship between the parties herein is hostile. In dealing with matters concerning families, the court must be mindful of the need to foster lasting family relations. As the parties litigate before this court, they are family members. After they leave the court, they shall remain family members. The court being keenly aware of this fact must endeavor to make a decision that will rebuild the broken relationships.

15. In prayer 3 of the application, the applicants seek that the respondents be punished for contempt and/or be stripped of their mandate as administrators of the estate. They relied on the case of *In re estate of Njue Kamunde (Deceased)* [2018] eKLR where Limo, J. stated:

The powers and duties of a personal representative (s) or administratrix/administrator is well spelt under the provisions of sections 82 and 83 of *Law of Succession Act*. It is also true that a personal representative is in a fiduciary position in regard to the estate of a deceased person. As a trustee she/he is expected to all times act in the best interest of the estate. Where conflict of interest arises or where it is shown that an administrator has acted contrary to the cited sections of the law (read sections 82 ad 83), i agree with the applicant that section 47 *Law of Succession Act* and rule 73 *Probate and Administration Rules* can be invoked to remove or suspend him/her. I have gone through the relevant volume of *Halsbury's Law of England* 4th edition page 750 to 756 and do agree that the same principles do apply here by virtue of section 3 (b) of the *Judicature Act*. I also agree that personal representatives are subject to supervision of this court and this court will not shy away from making any orders that may be expedient and necessary for the ends of justice and to prevent abuse of powers conerved to them under Sections 53 and 79 of the *Law of Succession Act*.

16. I have considered that the respondents have since filed the summons for confirmation of grant, though belatedly. They have however not fully complied with the orders of 12.10.2021.

17. I therefore make the following orders:

- i. The respondents shall by October 5, 2022 pay the sum of Kshs 75,000/= to the 1<sup>st</sup> applicant being upkeep of the month of October 2022 and shall continue to do so by the 5<sup>th</sup> day of each month pending the hearing and determination of this suit.
- ii. The respondents shall by November 30, 2022 pay to 1<sup>st</sup> applicant all the outstanding arrears of the upkeep.
- iii. The respondents shall pay all outstanding debts of the estate and continue to do so pending the hearing and determination of this suit and by November 30, 2022 file documentary evidence demonstrating compliance.
- iv. In default, the grant issues to the respondents shall stand revoked.
- v. Mention on December 6, 2022 to confirm compliance.



DATED, SIGNED AND DELIVERED IN NAIROBI THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2022.

M. THANDE

JUDGE

In the presence of: -

.....for the applicants

.....for the respondents

.....court Assistant

